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2 CROWLEY, HAUGHEY, HANSON,  
3 TOOLE & DIETRICH P.L.L.P.  
4 500 TRANSWESTERN PLAZA II  
5 490 NORTH 31<sup>ST</sup> STREET  
P. O. BOX 2529  
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6 ATTORNEYS FOR FIRST INTERSTATE BANK

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8 IN THE UNITED STATES BANKRUPTCY COURT

9

10 FOR THE DISTRICT OF MONTANA

11 IN RE: ) Bankruptcy No.: 06-60855-RBK-11  
12 )  
13 INCREDIBLE AUTO SALES LLC, ) MOTION TO MODIFY STAY  
14 )  
15 Debtor. )  
16 \_\_\_\_\_ )  
17

The Motion of First Interstate Bank (“Bank”), secured creditor herein, respectfully  
represents:

1. The Debtor filed a Petition in this Court under Chapter 11 of the Bankruptcy  
Code on October 17, 2006.

2. Debtor is in possession of collateral which, upon information and belief, is  
owned by a third party and which is subject to Bank’s first priority lien. Pursuant to Mont.  
LBR 4001-1, Bank provides the following information:

A. The present balance owing to Bank, excluding any pre-computed interest or  
other unearned charges, is \$5,668.09.

1           B.     The date upon which the subject debt was incurred was May 1, 2002.

2           C.     Bank holds a security interest upon the following described property which,  
3 upon information and belief, is in possession of the Debtor:

4                         2001 Buick Regal, VIN 2G4WB55KX11307432 (the "Vehicle").

5           D.     On May 1, 2002, Colleen Sheehan and Dean Sheehan entered into a Retail

6                         Installment Contract and Disclosure (the "Contract"), in writing, with Underriner Motors of  
7 Billings, Montana, for the Sheehans' purchase of the Vehicle. A true and correct copy of the  
8 Contract is attached hereto as Exhibit "A" and by this reference incorporated herein.

9                         Thereafter, Underriner Motors' interest in the Contract was in due course assigned to Bank.

10                         Pursuant to the Contract, Bank has a security interest in the Vehicle. Bank perfected that  
11 security interest by filing a Notice of Lien Filing with the Montana Department of Motor  
12 Vehicles. A true and correct copy of the Notice of Lien Filing is attached hereto as Exhibit  
13 "B" and by this reference incorporated herein. Upon information and belief, on or about  
14 October 10, 2006, the Sheehans entered into a Retail Installment Sale Contract with Debtor  
15 wherein the Vehicle was traded to Debtor as part of the transaction. In the ordinary course of  
16 business, the dealer pays off the outstanding balance of the debt against the trade-in vehicle,  
17 and obtains title to the same. This did not happen in the present case. As a result, the full  
18 balance of the Contract is due and owing, and the Sheehans are in breach of the Contract.

19           E.     A description of Bank's collateral, including its location, is as follows:

20                         2001 Buick Regal, VIN 2G4WB55KX11307432

21 located in Debtor's possession.

22           F.     The fair market value of Bank's collateral is estimated to be at least  
23 \$5,668.09.

24           G.     There are no other security interests or liens which have priority over that of  
25 Bank.

H. The Contract is in default for the October 15, 2006, installment in the amount of \$333.94.

I. This Motion is made under and pursuant to 11 U.S.C., §362(d)(i) and §362(d)(ii).

J. Other facts which are relevant in determining whether relief should be granted are as follows: None.

3. Bank further represents that in the event the court grants its Motion, Bank will seek foreclosure and liquidation of the above-described collateral in accordance with applicable non-bankruptcy law, and will dispose of the collateral in a commercially reasonable manner.

4. Upon disposition, Bank shall account for all proceeds to the court and agrees to turn over any proceeds in excess of Bank's allowed secured claim to the Trustee.

**WHEREFORE**, First Interstate Bank respectfully requests the court to grant this Motion to Modify the stay imposed by Section, First Interstate Bank respectfully requests the court to grant this Motion to Modify the stay imposed by §362(a) of the Bankruptcy Code.

Dated this 2nd day of November, 2006.

CROWLEY, HAUGHEY, HANSON,  
TOOLE & DIETRICH P.L.L.P.

By /s/ Alan C. Bryan  
ALAN C. BRYAN  
P. O. Box 2529  
Billings, MT 59103-2529  
Attorneys for First Interstate Bank

## **NOTICE TO DEBTOR**

**If you object to the motion, you must file a written responsive pleading and request a hearing within ten (10) days of the date of the motion. the objecting party shall schedule the hearing and shall include in the caption of the responsive pleading the date, time and location of the hearing by inserting in the caption the following:**

## **NOTICE OF HEARING**

**Date:** \_\_\_\_\_

**Time:** \_\_\_\_\_

**Location:** \_\_\_\_\_

This contested matter shall be scheduled for hearing for the next hearing date scheduled in the division within which the case is filed. The date, time and location of the hearing can be obtained from the Clerk of Court or from the Court's website at [www.mtb.uscourt.gov](http://www.mtb.uscourt.gov). In the event such scheduled hearing date is thirty (30) days beyond the filing date of the motion for relief, then a preliminary hearing within such thirty (30) day period shall be scheduled by the responding party after such party contacts the Clerk of Court to confirm the preliminary telephone hearing date and time, which shall be set forth in the response.

If you fail to file a written response to the above Motion to Modify Stay with the particularity required by Mont. LBR 4001-1(b), and request a hearing, within ten (10) days of the date of this Notice, with service on the undersigned and all parties entitled to service under all applicable rules, then your failure to respond or to request a hearing will be deemed an admission that the motion for relief should be granted without further notice or hearing.

Dated this 2<sup>nd</sup> day of November, 2006.

CROWLEY, HAUGHEY, HANSON,  
TOOLE & DIETRICH P.L.L.P.

By /s/ Alan C. Bryan  
ALAN C. BRYAN  
P. O. Box 2529  
Billings, MT 59103-2529  
Attorneys for First Interstate Bank

**CERTIFICATE OF SERVICE**

Under penalty of perjury, I hereby certify that on the 2<sup>nd</sup> day of November, 2006, I served a true and exact copy of the foregoing by depositing the same in the U. S. Mail, first-class postage prepaid, addressed to the following:

Clarke B. Rice  
2951 King Ave West  
Billings, MT 59102  
By ECF Notice

William L. Needler  
555 Stokie Blvd Ste 500  
Northbrook, IL 60062  
By ECF Notice

Neal G. Jensen  
Assistant U.S. Trustee  
Liberty Center, Ste 204  
Great Falls, MT 59401  
By ECF Notice

Incredible Auto Sales LLC  
1832 King Ave West  
Billings, MT 59102

Colleen Sheehan  
655 Orchard Ln  
Billings, MT 59101-5029

Dean C. Sheehan  
655 Orchard Ln  
Billings, MT 59101-5029

/s/ Alan C. Bryan